UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

GEORGE GUINDON, BARBARA GUINDON, Individually BARBARA GUINDON, as Mother and Next Friend to ERICA GUINDON, minor; TAMMY AYER, as Guardian and Next Friend to KAYLA MARIE DOROTHY ABBENANTE AYER, minor; LOUIS ROSSI, as Administrator of the Estate of JOSEPH ROSSI; CHRISTOPHER SCOT; JULIANNA GIAVEN; ERIC MALARDO; MICHELLE MALARDO; RICHARD SANETTI; PATRICIA SANETTI; MICHELLE SPENCE, Individually, MICHELLE SPENCE, as Mother and Next of Friend of Hailey Spence, minor; CATHERINE CARIGNAN; EDWARD CORBETT, JR. as Administrator of the Estate of EDWARD CORBETT, III; PAUL AND BETTY ROE, Individually, PAUL AND BETTY ROE, as Co-Administrators of the Estate of LORI K. DURANTE; DANIEL DAVIDSON; and STEPHEN BRUNO

Plaintiffs

C.A. No. 03-335 L

v.

AMERICAN FOAM CORPORATION; FOAMEX INTERNATIONAL; BARRY H. WARNER; TRITON REALTY LIMITED PARTNERSHIP; JEFFREY DERDERIAN; MICHAEL DERDERIAN; DERCO, LLC; MANIC MUSIC MANAGEMENT, INC.; JACK RUSSELL; MARK KENDALL; DAVID FILICE; ERIC POWERS; DANIEL BICHELE; PAUL WOOLNOUGH; KNIGHT RECORDS, INC.; ANHEUSER-BUSCH, INC.; McLAUGHLIN & MORAN, INC.; LUNA TECH, INC.; LUNA TECH PYROTECHNIC GMBH; CLEAR CHANNEL COMMUNICATIONS INC. d/b/a WHJY-FM; MOTIVA ENTERPRISES, LLC; SHELL OIL COMPANY; TOWN OF WEST WARWICK; DENNIS LAROCQUE; STATE OF RHODE ISLAND and IRVING J. OWENS

Defendants

ANSWER TO COMPLAINT OF DEFENDANT, BARRY WARNER

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Now comes Defendant, ***Barry Warner***, and hereby answers Plaintiffs' complaint as follows:

JURISDICTION AND VENUE

1. The allegations of Paragraph 1, can neither be admitted nor denied as they state conclusions of law rather than factual assertions.

2. The allegations of Paragraph 2, can neither be admitted nor denied as they state conclusions of law rather than factual assertions.

3. The allegations of Paragraph 3, can neither be admitted nor denied as they state conclusions of law rather than factual assertions.

PARTIES

4-19. As to Paragraphs 4-19 of Plaintiffs' Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein, and therefore, leaves Plaintiffs to their proof.

20. Defendant admits that American Foam Corporation is a corporation organized under the laws of the State of Rhode Island with a principal place of business in Johnston, Rhode Island, and denies the remaining allegations set forth in Paragraph 20 of Plaintiffs' Complaint.

21. As to Paragraph 21 of Plaintiffs' Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein, and therefore, leaves Plaintiffs to their proof.

22. The Defendant admits that he is a resident of West Warwick, Rhode Island and denies the remaining allegations set forth in Paragraph 22 of Plaintiff' Complaint.

23-45. As to Paragraphs 23-45 of Plaintiffs' Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein, and therefore, leaves Plaintiffs to their proof.

ALLEGATIONS COMMON TO ALL COUNTS

46. Defendant admits foam was purchased for The Station, but denies that Barry Warner sold the foam and denies the remaining allegations set forth in Paragraph 46 of Plaintiffs' Complaint.

47-76. As to Paragraphs 47-76 of Plaintiffs' Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein, and therefore, denies same.

CLAIMS AS TO AMERICAN FOAM CORPORATION

Counts 1-6, 61, 62, 81, 82, 101, 102, 121, 141, 142, 161, 181, 182, 283 *(sic)*, 284 *(sic)*, 194, 196, 198, 200, 208, 212, 214, 221-224, 226, 232, 236, 248, 270, 261, 262, 281, 282, 301-304, 306, 308, 310, 312, 316, 326, 332, 341, 342, 361 and 362

As to Paragraphs 77, 84, 86, 88, 98, 100, 343, 349, 502, 508, 659, 665, 808, 814, 957, 964, 1141, 1148, 1326, 1333, 1335, 1345, 1397, 1406, 1415, 1424, 1469, 1490, 1502, 1549, 1556, 1558, 1568, 1577, 1611, 1629, 1692, 1784, 1786, 1793, 1973, 1979, 2129, 2135, 2137, 2141, 2149, 2160, 2170, 21802196, 2240, 2266, 2324, 2330, 2473, and 2478 of Plaintiffs' Complaint, Defendant restates its responses to Paragraphs 1 through 2619 of Plaintiffs' Complaint as if fully set forth herein.

As to Paragraphs 78-83, 85, 87, 89-97, 99, 101, 344-348, 350-357, 503-507, 509-513, 660-664, 666-670, 808-813, 815-819, 958-963, 965-973, 1142-1147, 1149-1157, 1327-1332, 1334, 1336-1344, 1346, 1398, 1407, 1416, 1425, 1470, 1491, 1503, 1550-1555, 1557, 1559-1567, 1569, 1578, 1612, 1630, 1693, 1785, 1787-1792, 1794-1802, 1974-1978, 1980-1984, 2130-2134, 2136, 2138-2140, 2142, 2150, 2161, 2171, 2181, 2197, 2241, 2267, 2325-2329, 2331-2335, 2474-2477, and 2479-2482 of Plaintiffs' Complaint, Defendant denies the allegations set forth therein.

CLAIMS AS TO ALL OTHER DEFENDANTS

Counts 7-12, 19-60, 63, 64, 67-80, 83, 84, 87-100, 103, 104, 107-120, 123, 124, 127-140, 143, 144, 247 *(sic)*, 148-160, 163, 164, 167-180, 285 *(sic)*, 286 *(sic)*, 287 *(sic)*, 188, 193, 195, 197, 199, 201-207, 209-211, 213, 215-220, 225, 227, 228, 233-235, 227-247, 249-269, 263-254 *(sic)*, 267-280, 283, 284, 287-300, 305, 307, 313-315, 317-325, 327-331, 333-340, 343, 344, 347-360, 363, 364, and 367

As to Paragraphs 102, 109, 11, 113, 123, 125, 153, 160, 162, 164, 171, 173, 175, 182, 184, 186, 193, 195, 197, 204, 206, 208, 218, 220, 222, 232, 234, 236, 246, 248, 250, 257, 259, 261, 271, 273, 275, 285, 287, 289, 305, 307, 309, 322, 324, 326, 339, 341, 358, 364, 389, 395, 401, 407, 413, 419, 427, 435, 443, 449, 455, 464, 478, 490, 514, 520, 551, 557, 563, 569, 575, 532, 591, 599, 605, 611, 620, 635, 647, 671, 677, 700, 706, 712, 718, 724, 730, 736, 742, 748, 754, 760, 769, 784, 796, 820, 826, 849, 855, 861, 867, 873, 879, 885, 891, 897, 903, 909, 918, 933, 945, 974, 980, 1007, 1014, 1021, 1028, 1035, 1042, 1052, 1062, 1072, 1079, 1089, 1099, 1115, 1128, 1158, 1165, 1193, 1200, 1207, 1214, 1221, 1228, 1238, 1248, 1258, 1265, 1275, 1285, 1300, 1313, 1347, 1354, 1356, 1366, 1390, 1399, 1408, 1417, 1426, 1433, 1435, 1445, 1447, 1457, 1459, 1471, 1478, 1480, 1492, 1504, 1517, 1519, 1532, 1534, 1547, 1570, 1579, 1589, 1613, 1620, 1622, 1631, 1638, 1640, 1647, 1649, 1656, 1658, 1668, 1670, 1680, 1682, 1695, 1702, 1704, 1714, 1716, 1736, 1738, 1754, 1756, 1769, 1771, 1803, 1810, 1840, 1847, 1854, 1861, 1868, 1875, 1885, 1895, 1905, 1912, 1922, 1932, 1947, 1960, 1985, 1991, 2017, 2023, 2029, 2033, 2039, 2045, 2053, 2061, 2069, 2075, 2081, 2090, 2105, 2117, 2143, 2151, 2832, 2188, 2190, 2198, 2204, 2206, 2212, 2214, 2220, 2222, 2230, 2232, 2242, 2250, 2252, 2258, 2260, 2268, 2277, 2279, 2294, 2296, 2308, 2310, 2322, 2336, 2342, 2365, 2371, 2377, 2383, 2389, 2395, 2401, 2407, 2413, 2419, 2425, 2434, 2449, 2461, 2483, 2489, 2512, 2518, 2524, 2530, 2536, 2542, 2548, 2554, 2560, 2566, 2572, 2581, 2596, and 2608 of Plaintiffs' Complaint, Defendant restates its responses to Paragraphs 1 through 2619 of Plaintiffs' Complaint as if fully set forth herein.

As to Paragraphs 103-108, 110, 112, 114-122, 124, 126, 154-159, 161, 163, 165-170, 172, 174, 176-181, 183, 185, 187-192, 194, 196, 198-203, 205, 207, 209-217, 219, 221, 223-231, 233, 235, 237-245, 247, 249, 251, 256, 258, 260, 262-270, 272, 274, 276-284, 286, 288, 290-304, 306, 308, 310-321, 323, 325, 327-338, 340, 342, 359-363, 365-372, 390-394, 396-400, 402-406, 408-412, 414-418, 420-426, 428-434, 436-442, 444-448, 450-454, 456-463, 465-477, 479-489, 491-501, 515-519, 521-528, 530-550, 552-556, 558-562, 564-568, 570-574, 576-582, 584-590, 592-598, 600-604, 606-610, 612-619, 621-634, 636-646, 648-658, 672-676, 678-685, 701-705, 707-711, 713-717, 719-723, 725-729, 731-735, 737-741, 743-747, 749-753, 755-759, 761-768, 770-783, 785-795, 797-807, 821-825, 827-834, 850-854, 856-860, 862-866, 868-872, 874-878, 880-884, 886-890, 892-896, 898-

902, 904-908, 910-917, 919-932, 934-944, 946-956, 975-979, 981-988, 1008-1013, 1015-1020, 1022-1027, 1029-1034, 1036-1041, 1043-1051, 1053-1061, 1063-1071, 1073-1078, 1080-1088, 1090-1098, 1100-1114, 1116-1127, 1129-1140, 1159-1164, 1166-1174, 1194-1199, 1201-1206, 1208-1213, 1215-1220, 1222-1227, 1229-1237, 1239-1247, 1249-1257, 1259-1264, 1266-1274, 1276-1284, 1286-1299, 1301-1312, 11314-1325, 1348-1353, 1355, 1357-1365, 1367, 1391-1396, 1400-1405, 1409-1414, 1418-1423, 1427-1432, 1434, 1436-1444, 1446, 1448-1456, 1458, 1460-1468, 1472-1477, 1479, 1481-1489, 1493-1501, 1505-1516, 1518, 1520-1531, 1533, 1535-1546, 1548, 1571-1576, 1580-1588, 1590, 1614-1619, 1621, 1623-1628, 1632-2637, 1639, 1641-1646, 1648, 1650, 1655, 1657, 1659-1667, 1669, 1671-1679, 1681, 1683-1691, 1696-1701, 1703, 1705-1713, 1715, 1717-1735, 1737, 1739-1753, 1755, 1757-1768, 1770, 1772-1783, 1804-1809, 1812-1820, 1841-1846, 1848-1853, 1855-1860, 1862-1867, 1869-1874, 1876-1884, 1886-1894, 1896-1904, 1906-1911, 1913-1921, 1923-1931, 1933-1946, 1948-1959, 1961-1972, 1986-1990, 1992-1999, 2018-2022, 2024-2028, 2030-2032, 2034-2038, 2040-2044, 2046-2052, 2054-2060, 2062-2068, 2070-2074, 2076-2080, 2082-2089, 2091-2104, 2106-2116, 2118-2128, 2144-2148, 2152-2159, 2183-2187, 2189, 2191-2195, 2199-2203, 2205, 2207-2211, 2213, 2215-2219, 2221, 2223-2229, 2231, 2233-2239, 2243-2249, 2251, 2253-2257, 2259, 2261-2265, 2269-2276, 2278, 2280-2293, 2295, 2297-2307, 2309, 2311-2321, 2323, 2337-2341, 2343-2350, 2366-2370, 2372-2376, 2378-2382, 2384-2388, 2390-2394, 2396-2400, 2402-2406, 2408-2412, 2414-2418, 2420-2424, 2426-2433, 2435-2448, 2450-2460, 2462-2472, 2484-2488, 2490-2497, 2513-2517, 2519-2523, 2525-2529, 2531-2535, 2537-2541, 2543-2547, 2549-2553, 2555-2559, 2561-2565, 2567-2571, 2573-2580, 2582-2595, 2597-2607, and 2609-2619 of Plaintiffs' Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein, and therefore, denies same.

CLAIMS AS TO BARRY WARNER

Counts 13-18, 65, 66, 85, 86, 105, 106, 125, 126, 145, 146, 165, 166, 189, 190, 191, 192, 229-231, 265, 266, 285, 286, 309, 311, 345, 346, 365 and 366

As to Paragraphs 127, 136, 138, 140, 149, 151, 373, 381, 529, 537, 686, 692, 835, 841, 989, 998, 1175, 1184, 1368, 1377, 1379, 1388, 1591, 1600, 1602, 1821, 1831, 2000, 2009, 2162, 2172, 2351, 2357, 2497 and 2504 of Plaintiffs' Complaint, Defendant restates its responses to Paragraphs 1 through 2619 of Plaintiffs' Complaint as if fully set forth herein.

As to Paragraph 128 of Plaintiffs' Complaint, Defendant admits the allegations set forth therein.

As to Paragraphs 129-135, 137, 139, 141-148, 150, 152, 374-380, 382-388, 530-536, 538-544, 687-691, 693-699, 836-840, 842-848, 990-997, 999-1006, 1176-1183, 1185-1192, 1369-1376, 1378, 1380-1387, 1389, 1592-1599, 1601, 1603-1610, 1822-1830, 1832-1839, 2001-2008, 2010-1016, 2163-2169, 2173-2179, 2352-2356, 2358-2364, 2498-2503, and 2505-2511 of Plaintiffs' Complaint, Defendant denies the allegations set forth therein.

WHEREFORE, Defendant, ***Barry Warner***, demands judgment against Plaintiffs for costs.

FIRST AFFIRMATIVE DEFENSE

Defendant denies the applicability of the doctrine of strict liability in tort to this litigation.

SECOND AFFIRMATIVE DEFENSE

Defendant states that Plaintiffs' claims against Defendant are barred because damages or losses experienced, if any, were not due to any act or failure to act of this Defendant, but were caused solely by the acts of a third-party or parties for whose acts or failure to act this Defendant is not responsible.

THIRD AFFIRMATIVE DEFENSE

Defendant states that Plaintiffs were not in the exercise of due care, but rather the negligence of Plaintiffs contributed to or caused the injuries or damages complained of, and therefore, the recovery of Plaintiffs is barred in whole or in part, or is subject to diminution.

FOURTH AFFIRMATIVE DEFENSE

Defendant gave no warranties, express or implied, to Plaintiffs or to anyone acting on their behalf.

FIFTH AFFIRMATIVE DEFENSE

Defendant states that if there were express or implied warranties as alleged in the Complaint, which Defendant specifically denies, Plaintiffs were not within the scope of any such alleged warranties and no sale to Plaintiffs ever occurred of any product sold or distributed by Defendant.

SIXTH AFFIRMATIVE DEFENSE

Defendant states that Plaintiffs' claims based on allegations of express or implied warranty are barred for the reason that no sale of goods occurred.

SEVENTH AFFIRMATIVE DEFENSE

Defendant states that no one relied upon the skill and judgment of the Defendant in selecting the product referred to in the Complaint.

EIGHTH AFFIRMATIVE DEFENSE

Defendant states that if it was liable, negligent or in breach of any warranty, all of which it expressly denies, Defendant's liability in any or all of those events has been terminated by the intervening acts, omissions, or negligence of others for whose conduct Defendant is not legally responsible.

NINTH AFFIRMATIVE DEFENSE

Defendant states that the Complaint fails to state any claim upon which relief can be granted to the extent that it seeks punitive or exemplary damages, which are not recoverable under applicable law.

TENTH AFFIRMATIVE DEFENSE

Defendant states that an award of punitive damages against Defendant in this case would be unconstitutional and in violation of the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States.

ELEVENTH AFFIRMATIVE DEFENSE

Defendant states that if any express or implied warranties were made, which Defendant specifically denies, then Defendant denies that it breached any of the warranties.

TWELFTH AFFIRMATIVE DEFENSE

Defendant states that if Defendant, its agents or servants made any express warranties, allegations which Defendant specifically denies, then Plaintiffs did not rely on the express warranties and further, there was no such reliance by any person or entity authorized to represent Plaintiffs.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendant states that Plaintiffs failed to give notice of the alleged breaches of warranties within a reasonable time.

FOURTEENTH AFFIRMATIVE DEFENSE

Defendant states that Plaintiffs were not a third-party beneficiary with reference to any alleged warranties, either express or implied, and, therefore, Plaintiffs cannot recover in this action.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendant states that if Plaintiffs prove that Plaintiffs were injured as alleged, said injuries were caused by the intervening and/or superseding acts of third persons for whom this Defendant is not liable.

SIXTEENTH AFFIRMATIVE DEFENSE

Defendant pleads *General Laws of Rhode Island,* §9-1-32.

BARRY WARNER

By his Attorneys,

Ronald Langlois, Esq. #2891
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Providence, Rhode Island 02908
(401) 351-9970
Fax (401) 274-6218

Dated: August 31, 2004

Defendant, ***Barry Warner***, hereby claims a trial by jury.

Ronald Langlois, Esq.

CERTIFICATION

I hereby certify that I mailed a true copy of the within to the attorneys listed below on the 31 day of August, 2004.

Dana P. [signature]

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